(1995) 01 NCDRC CK 0055

In the National Consumer Disputes Redressal Commission

CONSUMER ACTION GROUP APPELLANT

Vs

Reserve Bank of India RESPONDENT

Date of Decision : 20-01-1995

Acts Referred:

Citation : 1995 3 CPJ 256

Hon'ble Judges : S.A.Kader , Ramani Mathuranayagam J.

Final Decision : Complaint dismissed without costs

Judgement

1. THIS is a Public Interest Litigation filed by the Consumer Action Group under Section 17 read with Section 12 of the Consumer Protection Act.

2. THE brief facts of the case are these:- THE 3rd opposite party, Indian Banks'' Association is an unregistered body having nearly 148 banks as members from the Public/Private and Foreign sectors. THE 3rd opposite party has arbitrarily and very substantially increased the service charges levied by its members for collection of Cheques, issue of Demand Drafts, Mail and Telegraph Transfers, processing of loans, discounting of bills, issue of bankers cheque, pay orders, ledger folio charges, etc. THE hiked charges are computed on an ad-valorem basis and bear no nexus to the ser-vices rendered. THEy are in the form of a tax on the public for using the banking system. Prior to the imposition of these new service charges, the opposite parties were levying charges nearly 300% less than the proposed hikes. Even now, many banks continue to levy only nominal and reasonable charges for their services. After dealing in details with the hike in the service charges for each of the services rendered by the banks, it is contended that the members of the 3rd opposite party should not adopt this stratagem of making exhorbitant and illegal profits by the hike in service charges. Public interest requires that the various above mentioned hike in charges must be suitably rectified. THE action of the 3rd opposite party in hiking the service charges is an unfair trade practice and should be discontinued. It amounts to Cartelisation and is a restrictive trade practice and is against public interest. THE complainant prays for an order directing the discontinuance of the above practice

and to cease and desist the following of this unfair trade practice by hiking the service charges. The 1st opposite party is the Reserve Bank of India. It is contended by the 1st opposite party that it has not fixed the service charges of the banks nor has it issued by directive or guidelines to the banks in this regard. The Reserve Bank of India has not considered it necessary or expedient in public interest or in the interest of depositors to issue any specific directions to banking institutions. It has been considered necessary to leave the discretion to the banks to fix the rate of service charges taking into account various factors like the cost of inputs in relation to the service rendered. Accordingly, the banks are competent individually or collectively through their associations or committees to decide the service charges for various services offered by them, the complainant has no fundamental right or legal right to challenge the service charges fixed by the banks. In any event, the Reserve Bank of India is not liable as it has not fixed the service charges. The Reserve Bank of India is not rendering any service to the complainant and the complainant is not therefore a consumer as regards the Reserve Bank of India.

The 2nd opposite party. Secretary to Government/Ministry of Finance, Government of India has remained ex parte.

3. THE 3rd opposite party is the main contestant and it is the Indian Banks'' Association. It is contended that the complainant is not maintainable and the prayers sought for cannot be granted. After referring to the definition of the unfair trade practice in Section 36(A) of the MRTP Act, it is pointed out that the service charges recommended by the 3rd opposite party do not constitute an unfair and deceptive practice. THE 3rd opposite party is a Voluntary Advisory Organisation of Members Banks and Financial Institutions. No Private Sector Bank is a Member. This voluntary organisation serves as a thinking group and forum for banks in matters of common concern such as Services, Exchange of ideas. Planning, Procedures, Operation Structure, Organisation and Administration. In respect of Public Sector Banks revision for service charges was long overdue since July ''90. On 28.1.91, the 3rd opposite party at the request of its Member Banks undertook an exercise of analyzing costs by forming a Costing Group consisting of experts. THE costing group undertook the exercise of review of costing studies, assessment of the adequacy of service charges levied, setting up of a mechanism for review of costing and creating awareness among the banks as well as customers about the gap between the cost of services and the charges recovered. THE member banks were advised of the bench mark rates vide Circular dated 16.9.94 to enable them to review their service charges at their level. THE new rates of service charges were evolved after detailed studies conducted by the costing group. After considering a number of factors, the costing group recommended the bench mark floor rates on which banks could evolve their own rate structure and could even consider evolving clientele-specific and private-specific rates structure so as to ensure that the return on providing these services meets the costs incurred. THE service charges are a quid-pro-quo for the particular service rendered and the element of tax is totally

absent. THE allegations that the hike in service charges is unreasonable, unjust and arbitrary are denied. It is also averred that the question whether the hike in service charges is reasonable or not cannot be agitated before this Commission in view of the finding of the National Commission. It therefore, prayed for the dismissal of the complaint. The 4th opposite party is the Indian Bank. The 5th opposite party is the Indian Overseas Bank and the 6th opposite party is the State Bank of India. They have filed separate counter statements disputing the claim of the complainant.

4. EXS. A1 to A8 and B1 to B11 are marked by consent. Proof affidavits are filed. The point that arise for consideration is whether the complaint is maintainable and to what relief if any is the complainant entitled. Point:-As already pointed out this is a Public Interest Litigation filed by a Voluntary Consumer Organisation challenging the recommendation of the 3rd opposite party, Indian Banks'' Association for hike in service charges for the various services rendered by the Member banks such as, collection of Cheques, issue of Demand Drafts, Bankers Cheques and Pay Orders, Mail and Telegraphic Transfers, Processing of loans. Discounting of Bills, Ledger Folio charges, etc. The 3rd opposite party, Indian Banks'' Association is a Voluntary Advisory Organisation of Member banks and Financial Institutions. According to the 3rd opposite party, the Private Sector banks are not members. The 3rd opposite party has at the request of its members undertake an exercise of analyzing the cost structure and the levy of banking charges. A Costing Group has been appointed and it has gone into the costing structure and recommended to its member banks the service charges to be adopted by them. Ex. B2 is the Circular and Annexure II therein contains the recommendations of the bank service charges of the 3rd opposite party, Association.

5. THE main contention of the complainant is that the hike in the service charges recommended by tender Ex.B2 is manifold. It is arbitrary and bears no nexus or connection whatsoever to the services rendered. THE hike is service charges is therefore unjust, unreasonable and cannot be enforced. Denying the allegation that the new service charges recommended by the 3rd opposite party to its member banks is unfair and unjust, it is pointed out that the National Commission has held that the forums constituted under the Consumer Protection Act have no jurisdiction to question the adequacy and reasonableness of the consideration or the price charged for the services rendered or to be rendered which is in the realm of pricing. THE learned Counsel for the complainant fairly conceded this position of law and we have therefore no hesitation in holding that this Commission cannot go into the fairness or reasonableness of the service charges recommended by the 3rd opposite party.

6. IT is then urged by the learned Counsel for the complainant that the circular issued by the 3rd opposite party recommending hike in service charges under Ex. B2 amounts to an unfair trade practice. Prior to the Amendment of the Consumer Protection Act by the Amendment Act 50 of 1993, Section 2(1)(r) of the Act

defined Unfair Trade Practice "As having the same meaning as in Section 36(A) of the Monopolies and Restrictive Trade Practices Act of 1969". The Amendment Act has defined Unfair Trade Practice as follows:- "Unfair Trade Practice" means a trade practice which, for the purpose of promoting the sale/use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:- 1. the practice of making any statement, whether orally or in writing or by visible representation which, - (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model; (ii) falsely represents that the services are of a particular standard, quality or grade; (iii) falsely represents any re-built, second-hand, re-novated, reconditioned or old goods as new goods; (iv) represents that the goods or services have sponsorship, approval, performance, characteristics accessories, uses or benefits which such goods or services do not have; (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have; (vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a produce or of any goods that is not based on an adequate or proper test thereof; provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence.

(viii) makes to the public a representation in a form that purports to be- (i) a warranty or guarantee of a product or of any goods or services; or (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant markets unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made; (x) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation.-For the purposes of Clause (1), a statement that is- (a) expressed on an article offered or displayed for sale, or on its wrapper or container; or (b) expressed on anything attached to, inserted in, or accompanying an article offered of displayed for sale, or on anything on which the article is mounted for display or sale; (c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement. Explanation.-For the purposes of Clause (2), "bargaining price" means- (a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or (b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the produce advertised or like products are ordinarily sold;

(3) Permits - (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole; (b) the conduct of any contest, lottery, game or chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by Competent Authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends or is intended to raise, the cost of those or other similar goods or services (2) any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such areas. The circular issued by the 3rd opposite party recommending to its member banks a hike in service charges does not fall within anyone of the above provisions of Section 2(1)(r) of the Consumer Protection Act. The learned Counsel for the complainant was not able to show how this Ex. B2 circular issued by the 3rd opposite party is hit by the definition of unfair trade practice in Section 2(1)(r) of the Act. We are therefore, unable to hold that the circular issued by the 3rd opposite party recommending to its member banks revised service charges amounts to unfair trade practice.

The next contention advanced by the learned Counsel for the complainant is that the issue of the Circular by the 3rd opposite party amounts to restrictive trade practice. The term is defined under Section 2(1)(nnn) of the Consumer Protection Act as follows:- "restrictive trade practice means any trade practice which requires a consumer to buy, hire or avail of any goods or as the case may be services as a condition precedent for buying, hiring or availing of other goods or services."

This is not the case before us. The circular issued by the 3rd opposite party under Ex.B2 does not require any consumer to buy, hire or avail of any goods or services as a condition precedent for buying, hiring or availing other goods or services. The circular is not therefore hit as a restrictive trade practice under Section 2(1) (nnn) of the Consumer Protection Act.

The thrust of the argument of the learned Counsel for the complainant is based upon the definition of restrictive trade practice in Section 33 of the M.R.T.P. Act and decisions thereunder and it is contended that this recommendation amounted to Cartelisation and is therefore a restrictive trade practice. Section 33 of the M.R.T.P. Act runs as follows:- (1) "Every agreement falling within one or more of the following categories shall be deemed, for the purposes of this Act, to be an agreement relating to restrictive trade practices and shall be subject to registration in accordance with the provisions of this Chapter, namely:- (a) any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought; (b) any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods; (c) any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person; (d) any agreement to purchase or sell goods or to tender for the sale or purchase of goods only at prices or on terms or conditions agreed upon between the sellers or purchasers; (e) any agreement to grant or allow concessions or benefits, including. allowances, discount, rebates or credit in connection with, or by reason of, dealings; (f) any agreement to sell goods, on condition that the prices to be charged on re-sale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged; (g) any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal of the goods; (h) any agreement not to employ or restrict the employment of any method, machinery or process in the manufacture of goods; (i) any agreement for the realisation from any trade association of any person carrying on or intending to carry on, in good faith the trade relation to which the trade association is formed; (j) any agreement to sell goods at such prices as would have the effect of eliminating competition or a competitor; (ja) any agreement restricting in any manner, the class or number of wholesalers, producers or suppliers from whom any goods may be bought; (jb) any agreement as to the bids which any of the parties thereto may offer at an auction for the sale of goods or any agreement whereby any party thereto agrees to abstain from bidding at any auction for the sale of goods; (k) any agreement act herein before referred to in this section which the Central Government may, (by notification specify for the time being as being one relating to a restrictive trade practice within the meaning of this sub-section pursuant to any recommendation made by the Commission in mis behalf; (1) any agreement to enforce the carrying out of any such agreement as is referred to in this sub-section. (2)The provisions of this section shall apply, so far as may be, in relation to agreements making provision for services as they apply in relation to agreements connected with the (production, storage, supply), distribution or control of goods. (3) No agreement falling within this section shall be subject to registration in accordance with the provision of this chapter if it is expressly authorised by or under any law for the time being in force or has the approval of the Central Government or if the Government is a party to such agreement.

This definition in Section 33 of the M.R.T.P. Act dealing with the Restrictive Trade Practice has not been incorporated in the Consumer Protection Act of 1986 and hence the provisions of this section in the M.R.T.P. Act and the decisions rendered thereunder have no application to proceedings under the Consumer Protection Act. The remedy of the complainant if any is before the Competent Court of civil jurisdiction or before the Monopolies and Restrictive Trade Practices Commission. The complaint filed before this Commission is misconceived, and must fail.

7. IN the result, the complaint fails and is dismissed, but without costs. Complaint dismissed without costs.